

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35861

CALIFORNIA HIGH-SPEED RAIL AUTHORITY—PETITION FOR DECLARATORY  
ORDER

Decided: October 17, 2014

On October 9, 2014, the California High-Speed Rail Authority (Authority) filed a petition requesting that the Board issue a declaratory order regarding the availability of injunctive remedies under the California Environmental Quality Act (CEQA) to prevent or delay construction of an approximately 114-mile high-speed passenger rail line between Fresno and Bakersfield, Cal. (the Line). The Board authorized construction of the Line, subject to certain conditions, in California High-Speed Rail Authority—Construction Exemption—in Fresno, Kings, Tulare, & Kern Counties, California, FD 35724 (Sub-No. 1) (STB served August 12, 2014) (Vice Chairman Miller concurring and Commissioner Begeman dissenting). The Authority states that seven lawsuits have been filed against the Authority challenging its compliance with CEQA with respect to the Line and that the lawsuits seek injunctive remedies under CEQA that would prevent or delay construction of the Line. The Authority argues that 49 U.S.C. § 10501(b) would preempt such CEQA remedies because injunctive relief would enjoin construction of a Board-authorized project.

The Authority has requested that the Board issue an expedited declaratory order by November 20, 2014. The first case management conference for the lawsuits is scheduled for November 21, 2014, and the Authority claims that a declaratory order issued before that conference would remove uncertainty regarding the CEQA injunctive remedies available to the litigants. The Authority states that it served a copy of its petition on all counsel of record in the lawsuits.

The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 721 to issue a declaratory order to eliminate a controversy or remove uncertainty. Here, it is appropriate to institute a declaratory order proceeding so that the Board can consider the issues raised in the Authority's petition regarding whether § 10501(b) would preempt CEQA injunctive remedies regarding the Line. The Board will therefore institute a proceeding to consider the matter. Interested persons may file substantive replies to the Authority's petition by November 6, 2014.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. A declaratory order proceeding is instituted.
2. Interested persons may file substantive replies to the Authority's petition by November 6, 2014.
3. Notice of the Board's action will be published in the Federal Register.
4. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.